Title 17. California Code of Regulations
Division 2.
Chapter 3: Community Services
Subchapter 17: Rate Adjustments, Audit Adjustments and Rate Appeals for In-Home Respite Services Agency Vendors
Article 2: Rate Adjustments

FINDING OF EMERGENCY

These regulations are being adopted on an emergency basis for the immediate preservation of the public peace, health and safety, and general welfare, within the meaning of Government Code Section 11346.1(b).

DESCRIPTION OF THE FACTS WHICH CONSTITUTE THE EMERGENCY

In recent years, families of developmentally disabled consumers have increasingly turned to the use of respite services in order to keep their families together and to keep the consumers living at home when possible. Although many regional centers purchase different mixes of service types, there are basically three options available to these centers. These options include: 1) purchasing services from a respite service agency; 2) purchasing services from individuals vendored to provide respite services; and 3) providing families with vouchers which may be used to hire their own workers to provide the services, including family members not living in the home.

There are approximately 27,090 family members of consumers who procure respite services utilizing a voucher issued by the regional center. Under the vouchered service, the regional center reimburses the vouchered family member who, in turn, has responsibility for the selection, supervision, and level of payment of the individual worker. The family member may select an individual, an agency, or a facility to perform respite services. Within a given period of time, the family member may utilize several different individuals, a respite agency, and/or, if out-of-home respite is required, a respite facility to provide the respite service. The family member has the flexibility to hire an individual, or individuals, at a lower rate of pay in order to increase the number of respite hours available to them, or they may reimburse the workers at varying levels of pay depending on the qualifications of the worker. By regulation, reimbursement for these workers may not exceed $8.57 per hour.

If the regional centers hire the respite workers directly (i.e., they are vendored as individual respite workers), the maximum reimbursement rate is also $8.57 per hour. In fiscal year (FY) 1999-00, $51 million was spent on respite services. Of this $51 million, approximately $48 million was spent for respite services procured by the vendored parents/guardians via vouchers. (See Table 1 and Chart 2)

On the other end of the scale, respite agencies, which maintain offices from which they recruit, train and place staff, have the highest reimbursement rates, ranging up to $18.82 per hour for fiscal year 2000/01, with a mean rate of $15.76 per hour. (See Table 2)

Because purchase of service dollars are limited, the units of service (purchased by regional centers from respite service agencies) has declined significantly as the unites of service purchased through family members vendored to procure respite services via a voucher has increased significantly (see attachments). (For respite agencies, the only "units of service" that are purchased by the regional centers are hours of service). Please refer to the attached charts and graphs to see the percentage decrease in the use of in-home respite service agencies for respite service as opposed to the percentage increase in use of vouchered family members purchasing services for respite service.

For example, in FY 1994-95, expenditures on respite agencies and expenditures on family members vendored to procure respite services via a voucher accounted for 55% and 42% of the total respite expenditures, respectively. By FY 1999-00, expenditures on family members vendored to procure respite services via a voucher swelled to 71% of the total expenditures, while the expenditures on respite agencies dropped to 23%. (See Table 1) While there is an issue of cost effectiveness, the respite agencies still provide a quarter of the respite services, and they must remain a viable option in order to keep families together.

Under the current rate structure, the respite agencies' rates are based on FY 1995-96 cost statements, plus various raises that have been allocated for specific purposes since then. Agencies in areas where regional centers have used vouchers heavily to procure respite services (called 'units of service' in regulations) cannot recover the fixed cost portion of expenses in light of the decreased usage. Regulatory changes are needed to allow these agencies to seek rate adjustments where it can be demonstrated that the increased use of vouchers has had such an impact on their operations that they can no longer cover their basic fixed overhead costs without such rate adjustments.

Existing regulations [Title 17, California Code of Regulations, Section 58420 (b)] require vendors to apply for anticipated rate adjustments prior to December 1 of the fiscal year in which a vendor expects the changes to occur. In order for vendors to be able to apply for these anticipated rate adjustments by the December 1 deadline this year, this filing needs to be approved on an emergency basis. Not approving this on an emergency basis would have a detrimental effect on the health and safety of the affected public, in that access to a large portion (nearly 25% - see Table 1) of the respite services currently available could be lost due to program closure. If these services were not available, an unknown number of consumers might be forced to live in institutional or residential environments, in that their families rely on these services in order to function as a family while maintaining the consumer in the home.

The Department chose the 25% threshold by analyzing the changing patterns in the purchase of services from both in-home respite service agencies and families vendors to provide services using the voucher process. While smaller percentages of change were considered normal for any business, possibly in the 10-20% range, the Department recognized that at some point agencies with fixed overhead costs would start going out of business, unable to meet the most basic fixed costs. The Department analyzed how many in-home respite service agencies had experienced 33% and 25% drops in the units of service purchased by regional centers in the eight years for which we had statistics. (See Table 1 and Chart 3)

Fourteen percent (14%), or approximately 1 in 6 vendors, would be affected at the 33% threshold level, while greater than 1 in five (21%) would be affected at the 25% threshold level. It was the Departments best judgment that action should be taken at the 25% threshold to allow vendors to apply for relief, in that a loss of 1 in 5 vendors would have a significant impact on the lives of families who depend on respite services to keep the family unit intact.

In the interest of fairness and in consideration of the State's fiduciary responsibility to taxpayers, language is proposed to also allow for the possibility that the units of service (hours of respite service) could also increase at some point. In theory, a vendor which received a rate increase under these new proposed provisions could later experience a large increase in the units of service being purchased for any number of reasons (e.g., a change in purchase of service policy by a specific regional center, a large placement of consumers back with their families, supported by respite services, etc.) It would not be in the public interest to allow these same vendors to reap a windfall profit due to the increased rate and increased usage. The language proposed would allow rates to be adjusted in these circumstances also.

AUTHORITY AND REFERENCE

Authority: Sections 4691 and 4691.5, Welfare and Institutions Code.
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INFORMATIVE DIGEST

<u>Title 17, California Code of Regulations (CCR), Division 2, Chapter 3: Community Services, Subchapter 17: Rate Adjustments, Audit Adjustments and Rate Appeals for In-Home Respite Services Agency Vendors, Article 2: Rate Adjustments, Section 58420, General Provisions</u>

DDS proposes to assure the availability of respite services to families of consumers by taking steps to ensure the financial viability of in-home respite service agencies. As described above, DDS also proposes that respite agencies' rates be adjusted when vendors have increased usage.

Section 58420 (a), (b), (c), (d), (e).
Changes are proposed to delete the term "program" when referring to types of rate changes allowed under regulation relating to anticipated and unanticipated rate changes.

Section 58420 (b)(3).
A new subsection (b)(3) is proposed which would allow in-home respite service agency vendors to apply for rate changes under the anticipated change regulations when they experience an increase or decrease of 25% or more in the units of service purchased by regional centers.

SMALL BUSINESS DETERMINATION

DDS has determined that the proposed regulations will affect small business. The regulations have, therefore, been drafted in plain English.

LOCAL MANDATE AND FISCAL IMPACT DETERMINATIONS

The Department has determined that the proposed regulatory action does not impose: 1) a mandate on local agencies or school districts, 2) costs to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630, or 3) other nondiscretionary costs or savings imposed on local agencies. The Department has determined that the proposed regulatory action will cost approximately $250,570 in Fiscal Year 2001-2002, but that the Department will be able to absorb these costs within its existing budget and resources.

ECONOMIC IMPACT AND BUSINESS ASSESSMENT

The proposed action will not: a) create new jobs within the State of California, b) help in the creation of new businesses within the State of California, nor c) cause the expansion of businesses currently doing business within the State of California.
DDS has determined that the proposed regulations will not have: a) a significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states, b) a significant potential cost impact on private persons or directly affected businesses, nor c) a significant effect on housing costs.